APPENDIX A

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

Nos. 98-31382, 98-31383

RACAL SURVEY U.S.A., INC.;
NCS INTERNATIONAL, INC.,
Plaintiffs-Counter
Defendants-Appellees,

v.

M/V COUNT FLEET, her engines,
tackle, furniture & appurtenances in rem; *et al.*,
Defendants,

TIDEWATER MARINE INTERNATIONAL, INC.,
Counter Claimant-Appellant.

RACAL SURVEY U.S.A., INC.;
NCS INTERNATIONAL, INC.,
Plaintiffs,

v.

M/V COUNT FLEET, her engines,
tackle, furniture & appurtenances in rem, *et al.*,
Defendants,

TIDEWATER MARINE INTERNATIONAL, INC., INTERVENOR
Defendant-Appellant-Cross-Appellee,

v.

INPUT/OUTPUT, INC., INTERVENOR
Plaintiff-Appellee-Cross-Appellant.

Oct. 24, 2000

Appeals from the United States District Court
for the Western District of Louisiana

Before EMILIO M. GARZA, DeMOSS and STEWART, Circuit Judges.

DeMOSS, Circuit Judge:

In these consolidated appeals, Tidewater Marine International, Inc., ("TMI") primarily challenges two of the district court's rulings arising out of an admiralty dispute. First, TMI argues that the district court erred in finding a maritime lien in favor of Racal Survey U.S.A., Inc., and NCS International, Inc., (collectively "Racal") over various vessels chartered by Coastline Geophysical, Inc., ("Coastline") from TMI. Second, TMI maintains that the district court improperly denied TMI a maritime lien over certain seismic equipment sold by Input/Output, Inc., ("Input") to Coastline.

Because Racal did not rely on the credit of the arrested vessels or provide any necessaries to those boats, we reverse the district court's judgment granting a maritime lien in favor of Racal. We, however, conclude that the district court did not err with respect to its ruling denying TMI a maritime lien over the seismic equipment sold by Input and, therefore, affirm the district court's ruling on that issue.

I. BACKGROUND

On February 16, 1996, Coastline entered into a Blanket Time Charter Agreement ("First Charter") with Tidewater Marine, Inc., ("Tidewater Marine").[1] According to that charter, Tidewater Marine was to provide vessels suited for

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[1] Tidewater Marine is a sister company of TMI. Both Tidewater Marine and TMI are subsidiaries of Tidewater, Inc. ("Tidewater"). Tidewater Marine operates vessels in domestic waters while TMI operates vessels in foreign waters. Neither Tidewater Marine or Tidewater is a party to this litigation.

offshore activities in the mineral and oil industry. Those vessels were to embark on a seismic expedition in the Gulf of Mexico in search of oil and gas. In conformance with the First Charter, on March 11, 1996, the two parties executed separate letter agreements for four vessels: 1) the M/V CAMERON SEAHORSE, 2) the M/V WHITTIE TIDE, 3) the M/V TAYLOR TIDE, and 4) the M/V TOUPS TIDE.

To do its seismic operations, Coastline required certain technical equipment. As a result, it made various inquiries to Racal, who submitted a proposal to Coastline on February 12, 1996. That proposal outlined the equipment to be leased and the services to be rendered to Coastline for its operations. Furthermore, Racal submitted another proposal on March 25, 1996, which pertained to the sale of certain other equipment to Coastline. On March 27, 1996, Racal shipped all of the required equipment to the shipyard for installation. The equipment would allow the four vessels to coordinate information among themselves to better facilitate the search for oil and gas. Two of the vessels would lay cable upon the ocean floor while a third, the source vessel, would send information along the cable via airgun shots from caterpillar machinery located on the vessel. A fourth vessel would record the data generated from these airgun shots. In addition to Racal's equipment, other equipment provided by Input was installed on the chartered vessels.

After the First Charter terminated, Coastline executed a second Blanket Time Charter ("Second Charter") on August 13, 1996. Although similar in nature to the earlier charter agreement, the Second Charter differed in three respects: 1) TMI, not Tidewater Marine, was the vessel owner; 2) four different vessels would be used; and 3) the seismic operations would be conducted off the coast of Africa, not in the Gulf of Mexico. On August 19, 1996, Coastline again agreed to separate letter agreements for four vessels: 1) the M/V SECRETARIAT, 2) the M/V COUNT FLEET, 3) the M/V COUNT TURF, and 4) the M/V MILTON TIDE.

Between August 28, 1996, and September 2, 1996, the equipment that had been placed onto the First Charter vessels was transferred to the four new vessels at Quality Shipyards, a subsidiary owned by Tidewater.

When the Africa survey concluded, the four vessels chartered for that trip sailed to Trinidad and Tobago for another job. During that voyage, the charter between Coastline and TMI terminated due to non-payment of charter hire, but Coastline's equipment remained on board. Besides failing to pay TMI, Coastline became insolvent and defaulted on its payments to Racal and Input.[2] Upon the return of the Second Charter vessels to the United States, Racal arrested three of them. TMI secured the release of the vessels and removed and stored Coastline's equipment. Shortly thereafter, TMI arrested Coastline's equipment, in some of which Input claimed a UCC security interest, because of Coastline's non-payment of charter hire.

In district court, Racal filed a motion for partial summary judgment requesting determination of the validity of its lien under the Federal Maritime Lien Act ("FMLA"), 46 U.S.C. § 31342. TMI opposed that motion and filed a cross-motion for summary judgment. After taking the motions under advisement, the district court ruled in favor of Racal. Moreover, the district court granted Input's "Application for Petitioner to Show Cause Instanter or, Alternatively, Motion for Summary Judgment" and denied TMI's motion for summary judgment seeking recognition of its claimed maritime lien in the Coastline equipment.

TMI now appeals both of those rulings.

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[2] With respect to Coastline's obligations to Input, they derived from Coastline's failure to pay First Interstate Bank ("First Interstate"), which had financed Coastline's purchases from Input. Input had guaranteed those purchases, and after Coastline's default to First Interstate, Input paid those obligations and took the place of First Interstate.

II. STANDARD OF REVIEW

We review a grant or denial of summary judgment de novo. *See Webb v. Cardiothoracic Surgery Assocs., P.A.*, 139 F.3d 532, 536 (5th Cir.1998). Summary judgment is proper if the pleadings, depositions, answers to interrogatories, and admissions on file, together with any affidavits filed in support of the motion, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *See* Fed.R.Civ.P. 56(c). The summary judgment evidence is reviewed in the light most favorable to the nonmovant. *See Melton v. Teachers Ins. & Annuity Ass'n*, 114 F.3d 557, 559 (5th Cir.1997). If the moving party meets its initial burden of showing that there is no genuine issue, then the burden shifts to the nonmovant to set forth specific facts showing the existence of a genuine issue. *See* Fed.R.Civ.P. 56(e). The nonmovant cannot satisfy his summary judgment burden with conclusional allegations, unsubstantiated assertions, or only a scintilla of evidence. *See Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir.1994) (en banc). If the nonmovant fails to respond, then summary judgment, if appropriate, shall be entered against that party. *See* Fed.R.Civ.P. 56(e).

III. DISCUSSION

Both of TMI's appeals involve the concept of a maritime lien, a device developed as a necessary incident to the operation of vessels. *Piedmont & George's Creek Coal Co. v. Seaboard Fisheries Co.*, 254 U.S. 1, 41 S.Ct. 1, 3, 65 L.Ed. 97 (1920). Because a ship moves from place to place, it is peculiarly subject to vicissitudes that would compel abandonment of vessel or voyage, unless repairs and supplies are promptly furnished. *Id.* Moreover, a ship is often absent from her home port without access to funds and, as a result, must be able to obtain upon her own account needed repairs and supplies. *Id.* That and the resulting need to ensure that a

ship did not sail away from its debts contributed to the creation of the maritime lien. *See Equilease Corp. v. M/V SAMPSON*, 793 F.2d 598, 602 (5th Cir.1986) (en banc).

Prior to 1910, however, a maritime lien was hardly a certainty for the supplier of necessaries because the law was full of exceptions. *Gulf Oil Trading Co. v. M/V CARIBE MAR*, 757 F.2d 743, 747 (5th Cir.1985). To remedy that situation, Congress in 1910 enacted the Federal Maritime Lien Act ("FMLA"), 46 U.S.C. §§ 971-975,[3] to bring a degree of uniformity to the area of maritime liens. *Id.* The FMLA essentially preempted the various state statutes with respect to the conferral of maritime liens for repairs, supplies, and other necessaries. Equilease, 793 F.2d at 602-03. And it eliminated the distinction that had been drawn between a vessel in her home port and a vessel in a foreign port. *Id.* Before the FMLA, a lien could be given for necessaries furnished to a vessel in a port of a foreign state if the necessaries were furnished upon the credit of the vessel, but no such lien could be given for necessaries furnished in a vessel's home port or state. *Id.*

Section 971 of the FMLA provided a maritime lien to "any person furnishing repairs, supplies, towage, use of dry dock or marine railway, or other necessaries, to any vessel, whether foreign or domestic, upon the order of the owner of such vessel, or of a person authorized by the owner," and it further stated that the furnishing person need not "allege or prove that credit was given to the vessel." 46 U.S.C. § 971 (superseded 1988). Section 972 created a presumption that the managing owner, ship's husband, master, or any person to whom the management of the vessel at the port of supply was intrusted had authority to procure necessaries. Section 973 added to the individuals presumed to have authority to procure necessaries under § 972, including those officers and agents

[3] Congress superseded that prior version of the FMLA in 1988 and recodified much of it at 46 U.S.C. §§ 31341-31343.

appointed by a charterer, by an owner pro hac vice, or by an agreed purchaser in possession of the vessel. Although that section broadened the group of individuals presumed to have authority to procure necessaries, it also placed a significant limitation and duty upon the supplier of necessaries. Under § 973, if the furnisher knew, or by exercise of reasonable diligence could have ascertained, that because of the terms of a charter party, agreement for sale of the vessel, or for any other reason, the person ordering repairs, supplies, or other necessaries was without authority to bind the vessel, then a maritime lien could not attach. In 1971, Congress deleted the "exercise of reasonable diligence" language because that language had severely hampered suppliers' ability to obtain a maritime lien.[4] *Gulf Oil*, 757 F.2d at 747-48. As for § 974, that section pertained to a furnisher's ability to waive its right to a maritime lien by agreement or otherwise.

In 1988, Congress superseded the prior version of the FMLA and enacted new provisions primarily at 46 U.S.C. §§ 31341-31343.[5] *See Silver Star Enters., Inc. v.*

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[4] Congress also deleted the reference to knowledge of a prohibition of lien clause as creating a bar to the formation of a maritime lien. *See Gulf Oil*, 757 F.2d at 748. In Gulf Oil, however, we concluded that the deletion of that language did not signify any Congressional desire to render prohibition of lien clauses completely ineffectual and held that actual knowledge could still bar a maritime lien. *See id.* at 749.

[5] FN5. Section 31341 provides in pertinent part:

(a) The following persons are presumed to have authority to procure necessaries for a vessel:

(1) the owner;

(2) the master;

(3) a person entrusted with the management of the vessel at the port of supply; or

(4) an officer or agent appointed by—

(A) the owner;

(B) a charterer;

SARAMACCA MV, 82 F.3d 666, 668 n. 2 (5th Cir.1996). The most significant change was that Congress included a definition for "necessaries." *See* 46 U.S.C. § 31301(4). Section 31301(4) states that "'necessaries' includes repairs, supplies, towage, and the use of a dry dock or marine railway." In the prior version of the FMLA, "necessaries" was not defined, but its meaning could be derived from the context of § 971, which stated that a maritime lien could be received for furnishing "repairs, supplies, towage, use of dry dock or marine railway, or other necessaries." Although § 31301(4) enumerates specific kinds of "necessaries," Congress did not intend to make any substantive change to the law. *See* H.R.Rep. No. 100- 918 (1988), U.S.Code Cong. & Admin. News 1988, 6104. Indeed, besides some other minor changes in language, such as replacing the term "furnishing" with the word "providing," little changed substantively. *See, e.g., Silver Star*, 82 F.3d at 668 n. 2; H.R.Rep. No. 100-918. Accordingly, much of the case law remains persuasive, if not controlling.

With that history in mind, we now review each of the claimed maritime liens.

A. *Racal v. TMI*

In appealing the district court's judgment finding a maritime lien in favor of Racal over the four vessels used during the Second Charter, TMI raises several arguments to

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(C) an owner pro hac vice; or

(D) an agreed buyer in possession of the vessel.

Section 31342 reads in pertinent part:

(a) . . . [A] person providing necessaries to a vessel on the order of the owner or a person authorized by the owner

(1) has a maritime lien on the vessel;

(2) may bring a civil action in rem to enforce the lien; and

(3) is not required to allege or prove in the action that credit was given to the vessel.

support reversal. Because TMI most adamantly contends that Racal does not have a lien over the vessels because Racal did not rely on the credit of the vessels, we address that argument first.

Subsection 31342(a)(3) provides that a person providing necessaries to a vessel "is not required to allege or prove . . . that credit was given to the vessel." The prior version of the FMLA contained a similarly worded statement at § 971. In construing that prior version, the Supreme Court held that the relevant language only served to remove from the supplier the burden of proving that it relied on the credit of the vessel. *See Equilease*, 793 F.2d at 605 (interpreting Piedmont). That is, we must presume that the supplier relied on the credit of the vessel.

The FMLA may have created a presumption of credit based on the vessel, but it did not do away with "the idea of credit to the vessel being a prerequisite to a lien, and the concomitant principle that credit to the owner negates the lien." *Id.* Because under the FMLA a presumption arises that one providing supplies to a vessel acquires a maritime lien, the party attacking the presumption must establish that the personal credit of the owner or the charterer was solely relied upon. *Id.* "To meet this burden, evidence must be produced that would permit the inference that the supplier purposefully intended to forego the lien." *Id.*

TMI argues that it satisfied that burden and complied with Fifth Circuit case law, as stated in Equilease. For support, it points to testimony by Richard Pender, Racal's president:

> Q: So you weren't relying on credit of Tidewater or any of its vessels when you were entering into this contract with Coastline?
>
> . . .
>
> A: Yeah, I mean, our contract was with Coastline. That was our customer.
>
> . . .

Q: At the time of contracting with Coastline, you weren't looking to Tidewater or any of its vessels for payment of Coastline's contract with NCS?

. . .

A: I had no contract with Tidewater.

Q: You had no dealings with Tidewater whatsoever?

A: No. I had no—no.

Racal counters that Pender's testimony does not aid TMI's position that Racal intended to forego a maritime lien because the testimony does not specifically indicate that Racal planned to waive the lien and rely solely on the credit of a party other than the vessel. According to Racal, Equilease and the cases preceding it held that a party opposing the maritime lien has the burden to prove that the supplier looked solely to a party's personal credit. *See Equilease*, 793 F.2d at 606; *see also Point Landing, Inc. v. Alabama Dry Dock & Shipbuilding Co.*, 261 F.2d 861, 867 (5th Cir.1958); *Sasportes v. M/V SOL DE COPACABANA*, 581 F.2d 1204, 1209 (5th Cir.1978) (quoting Point Landing). Because Pender's testimony does not state that Racal looked solely to Coastline or some entity other than the vessels, Racal contends that TMI has failed to rebut the presumption.

In Equilease, a financing corporation instituted foreclosure proceedings on the preferred mortgages of three chartered vessels. Equilease, 793 F.2d at 600. The charterer's insurance broker intervened in the proceedings, attempting to recover for the vessels' unpaid insurance premiums. *Id.* Among other things, the insurance broker claimed a maritime lien under the FMLA for the insurance. *Id.* The financing corporation charged that insurance did not constitute a necessary for purposes of the FMLA. *Id.* Sitting en banc, we held that insurance constituted a necessary but that the insurance broker failed to meet the statutory requirement of reliance on the credit of the vessel when furnishing the insurance. *Id.* at 607.

In determining that the insurance broker did not rely on the credit of the vessel, we specifically noted two items from the record. First, it referred to the testimony of a former manager of the insurance broker. That testimony revealed that the insurance broker looked solely to the charterer, the financing corporation, or another party other than the vessels.

> Q: So you are saying you relied only on Dunnamis, Equilease, and/or Eltra, is that a fair statement?
>
> A: That's a fair statement.

Id. at 606. Second, we found a statement in the insurance broker's initial appellate brief admitting to sole reliance on a party other than the vessels. In that brief, the insurance broker stated, "The Unilease Companies were totally funded for the operations of the Vessels by Equilease and it was the credit of Equilease upon which all parties placed total reliance." *Id.*

In light of the fact that the insurance broker appeared to rely solely on the credit of entities other than the vessels, the judgment in Equilease was in keeping with prior Fifth Circuit case law. But we also concluded in Equilease that "in the absence of reliance-intention, by presumption, or otherwise-there is no right to claim a lien." *Equilease*, 793 F.2d at 606 n. 9. Thus, we held that by deliberately choosing not to rely on the credit of a vessel, a supplier, as a matter of law, purposefully intends to forego its right to claim a maritime lien. *Id.*

Here, TMI does not point to any evidence directly indicating that Racal intended solely to look towards Coastline or some party other than the vessels for payment, although some items in the record do suggest such a posture.[6]

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[6] For example, Racal forwarded a promissory note to Coastline to finance the purchase of a computer system. In addition, Racal's lease proposal to Coastline states that Racal would submit itemized bills to Coastline and that Coastline had to make payment within 30 days. Of

But Pender's testimony clearly indicates that Racal did not rely on the credit of the vessels. Almost nothing is more conclusive than such testimony as to whether there was reliance. Not even testimony that Racal looked solely to another party for payment better demonstrates that Racal did not provide the supplies on the credit of the vessels. When evidence reveals that a supplier looked solely to a party other than a vessel for payment, we are persuaded that the supplier was not relying on the credit of the vessels because of the logical inference that can be derived from that evidence. In the instant case, we need not trouble ourselves with any inference as the evidence is directly on point. Accordingly, consistent with Equilease, because the testimony explicitly shows that Racal deliberately chose not to rely on the credit of the four chartered vessels, as a matter of law, Racal purposefully intended to forego its maritime lien.[7] *See id.*

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course, neither piece of evidence is sufficient to demonstrate that Racal solely relied on Coastline's credit. *See Point Landing*, 261 F.2d at 867.

[7] The two other cases cited by Racal in its brief, Point Landing and Sasportes, do not sway our view. First, given any conflict between those two cases and Equilease, the latter controls as an en banc decision. Second, in neither Point Landing or Sasportes was there direct evidence indicating that the supplier did not rely upon the credit of the vessel. Rather, in both cases, the sole reliance element was emphasized to demonstrate the lack of evidence supporting the view that the supplier had not relied on the credit of the vessel. If a supplier solely relied on the credit of a party other than the vessel, then the only logical inference would be that the supplier did not rely on the credit of the vessel. But acceptance of a mortgage or a promissory note by the supplier, as was the case in Point Landing, does not inexorably lead to the conclusion that the supplier relied solely on the credit of a party other than the vessel or that the supplier did not rely on the credit of the vessel. *See Point Landing*, 261 F.2d at 867. In the present case, we do not just have evidence of a mortgage or a promissory note, but specific testimony that Racal did not rely upon the credit of the vessels.

But even if Racal had relied upon the credit of the vessels, TMI insists that a maritime lien could not have attached because the equipment and services, which allegedly were necessaries, were not provided to the vessels. Under § 31342, a supplier of necessaries must provide those goods or services to a vessel to receive a maritime lien. Likewise, under § 31342's predecessor statute, a supplier had to furnish necessaries to a vessel to receive the benefits of a lien. *See* 46 U.S.C. § 971 (superseded 1988). As previously noted, the change in terms did not materially alter the law, and we have continued to rely on case law preceding the recodification to interpret the current statute. *See, e.g., Silver Star*, 82 F.3d at 668-69.

The seminal case in this area is the Supreme Court's decision in *Piedmont & George's Creek Coal Co. v. Seaboard Fisheries Co.*, 254 U.S. 1, 41 S.Ct. 1, 65 L.Ed. 97 (1920). In that case, a coal company sought a maritime lien on several vessels that had utilized the coal company's coal. See Piedmont, 41 S.Ct. at 2. Under the arrangement between the coal company and the vessels' prior owner, the coal company agreed to furnish such coal as would be required to operate the vessels and the factories of the vessels' prior owner. *Id.* No coal was delivered directly to the vessels, and there was no reference on any invoice to the vessels. *Id.* at 2. Instead, the coal was loaded onto barges, towed to the factories, and then placed in bins to commingle with coal from sources other than the coal company. *Id.* Partly due to those facts, the Supreme Court concluded that the coal company had not furnished the coal to the vessels and that the vessels' prior owner had actually furnished the coal. *Id.* at 4.

Relying on Piedmont and other circuit's interpretations of § 31342, we recently declined to extend coverage of the FMLA to bulk cargo containers leased to vessel owners or charterers. *See Silver Star*, 82 F.3d at 667. In Silver Star, a cargo container company provided nearly 120 cargo

containers to a shipper that owned and/or chartered several vessels. *Id.* When a preferred mortgagee sought to enforce its mortgages against two of the shipper's vessels, the cargo container company intervened, claiming maritime lien rights arising from the lease of the containers. *Id.* We found no such rights because the cargo container company provided the containers to the shipper, not to the vessels. *Id.* at 669. The lease did not earmark particular containers for service on particular vessels. *Id.* at 667. The shipper had ultimate authority as to which vessels the containers were going to be placed. *Id.* at 669. And neither the shipper or the cargo container company knew aboard which ship a particular container would be placed at any given time. *Id.*

Despite Piedmont and Silver Star's misgivings about the extension of maritime liens to situations where necessaries were not apparently designated for specific vessels, the district court ruled that Racal had provided necessaries to the four chartered vessels. In so holding, the district court cited as support another Supreme Court case, *Dampskibsselskabet Dannebrog v. Signal Oil & Gas Co.*, 310 U.S. 268, 60 S.Ct. 937, 84 L.Ed. 1197 (1940). There, an oil company contracted with a shipping company to sell fuel oil to the "vessels owned, chartered, or operated by W.L. Comyn & Sons." *Id.* at 938. Later, two vessels were chartered to W.L. Comyn & Sons, and the oil company supplied them with fuel oil. *Id.* Ultimately, the oil company libeled the two vessels for fuel oil supplied to the vessels on the charterer's orders. *Id.* at 939. In acknowledging that a maritime lien could be asserted against the vessels, the Supreme Court referred to Piedmont and noted that "the oil was supplied exclusively for the vessels in question, was delivered directly to the vessels and was so invoiced." *Id.* at 942. Comparing that statement with the facts in the instant case, the district court found that Racal delivered the seismic equipment directly to the vessels.

We believe that was error. Although the *Dampskibsselskabet* court stated that "the oil was supplied exclusively for the vessels in question, was delivered directly to the vessels and was so invoiced" in response to the vessels' owners' contention that Piedmont precluded a maritime lien from attaching, the owners did not raise the Piedmont case to contest whether the oil company had furnished the oil to the vessels. Rather, the owners pressed Piedmont because that case, like theirs, involved a general contract to supply a necessary, and they thought that Piedmont somehow affected the issue of whether the oil company had supplied oil upon the charterer's credit and not upon the credit of the vessels. That is, the holding of *Dampskibsselskabet* did not actually pertain to whether the oil company had provided fuel oil to the vessels.

Assuming, though, that the *Dampskibsselskabet* court's statement was not dicta, we still conclude that the district court erred in finding that Racal provided the seismic equipment and services to the vessels.[8] Contrary to *Dampskibsselskabet*, Racal did not supply the equipment and services exclusively for the four Second Charter vessels. Indeed, Racal and Coastline entered into several agreements with respect to the services and the leased and sold equipment months before the Second Charter vessels were ever selected. Racal cannot fairly say that the alleged necessaries were exclusively provided to the Second Charter vessels when the equipment, and the attendant services, was first procured to be placed in unnamed vessels that were later designated as the First Charter vessels. The equipment was sold or leased to Coastline, which had control over which vessels the equipment was to be placed. Subsequent to the Gulf of

[8] The district court also found as important the fact that the seismic equipment was installed at a shipyard that is a subsidiary of TMI's mother corporation. We do not find that fact to be determinative in reaching our conclusion.

Mexico operation, Coastline merely transferred the equipment, and the attendant services, to the Second Charter vessels. Accordingly, we believe that the instant case more closely parallels the situations confronted in Piedmont and Silver Star and conclude that Racal's equipment and services were not provided to the vessels.

Because Racal did not provide the equipment and services, which constituted the alleged necessaries, to the vessels and because Racal deliberately chose not to rely on the credit of the four chartered vessels, we find that the district court erred in granting Racal's summary judgment motion claiming a maritime lien in TMI's Second Charter vessels.[9] Therefore, we reverse and remand for proceedings consistent with this opinion.

B. *TMI v. Input*

TMI's other issue on appeal concerns the district court's ruling denying TMI a maritime lien over Coastline's equipment despite Coastline's breach of the charter for non-payment. The district court orally held that Coastline's equipment was not cargo and declined to extend the concept of a maritime lien to items other than cargo. In challenging the district court's decision, TMI contends that a general maritime lien may be asserted for breach of a charter and that, in any case, Coastline's equipment was cargo.

Maritime liens are stricti juris and will not be extended by construction, analogy, or inference. Piedmont, 41 S.Ct. at 4. Moreover, they are largely statutorily created. *See Lake Charles Stevedores, Inc. v. PROFESSOR VLADIMIR POPOV MV*, 199 F.3d 220, 224 (5th Cir.1999), cert. denied,—U.S.—, 120 S.Ct. 2006, 146 L.Ed.2d 956 (2000). Thus, to determine the validity of a maritime lien, we must normally refer to

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[9] TMI raised two other arguments in support of reversal. In light of our holding, we need not address those arguments.

statutory law or those liens that have been historically recognized in maritime law. *Id.*

Here, TMI's claimed maritime lien clearly does not come within the province of the FMLA. As for non-statutory maritime law, TMI has been unable to uncover a single case directly on point that suggests that a shipowner may assert a maritime lien against the charterer for items that are not cargo. The cases cited by TMI are inapposite and actually concern maritime liens in favor of the charterer against the boat owner. *See E.A.S.T., Inc. v. M/V ALAIA*, 876 F.2d 1168 (5th Cir.1989); *International Marine Towing, Inc. v. Southern Leasing Partners, Ltd.*, 722 F.2d 126 (5th Cir.1983). Nor do those cases extend a maritime lien to items other than cargo for breach of a charter. The lack of precedential authority and the stricti juris nature of a maritime lien are damning to TMI's cause, and we conclude that TMI's attempt to extend the concept of a maritime lien is unavailing.

With respect to TMI's other contention that Coastline's equipment was cargo, we find no error on the part of the district court. The evidence clearly indicates that TMI differentiated between cargo and Coastline's equipment. Furthermore, unlike cargo, much of Coastline's equipment had to be installed onto the vessels. Accordingly, we affirm the district court's judgment denying TMI a maritime lien over Coastline's equipment.

IV. CONCLUSION

For the foregoing reasons, we reverse the district court's judgment granting a maritime lien to Racal and remand for proceedings consistent with this opinion. As for the district court's judgment denying TMI a maritime lien on Coastline's equipment, we affirm.

APPENDIX B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE-OPELOUSAS DIVISION

[Filed Oct 26, 1998]

CIVIL ACTION
CONSOLIDATED NO. 97-1628
JUDGE HAIK
MAGISTRATE JUDGE METHVIN

RACAL SURVEY U.S.A., INC., *et al.*

Versus

M/V COUNT FLEET, *et al.*

CIVIL ACTION
CONSOLIDATED NO. 97-1692
JUDGE HAIK
MAGISTRATE JUDGE METHVIN

TIDEWATER MARINE INTERNATIONAL, INC.

Versus

TWO HIGH PRESSURE AIR
COMPRESSORS, ETC. *et al.*

CIVIL ACTION
CONSOLIDATED N0. 97-1668
JUDGE HAIK
MAGISTRATE JUDGE METHVIN

TIDEWATER MARINE INTERNATIONAL, INC.

Versus

THAT CERTAIN SEISMIC EQUIPMENT, ETC.

RULING

Pending before the Court is Plaintiffs', Racal Survey U.S.A. and N.C.S. Intl. Inc., hereafter referred to as Racal/NCS, Motion for Partial Summary Judgment pursuant to Federal Rule of Civil Procedure 56. The Motion was properly filed with the Clerk of Court for the Western District of Louisiana on March 5, 1998. Consolidated Plaintiff, Tidewater Marine Intl., hereafter referred to as Tidewater, filed their own Motion and Memorandum for Summary Judgment that also contained an Opposition to Racl/NCS' Motion for Partial Summary Judgment on July 9, 1998. Plaintiff, Racal/NCSfiled a Memorandum in Opposition to Tidewater's Motion for Summary Judgement on July 23, 1998. Also on July 23, 1998, Plaintiff filed a Motion to Strike the Affidavit of Keith Jones . On August 6, 1998, Tidewater filed a memorandum in opposition to Plaintiffs Motion to Strike. [137-1]

After a thorough review of both Motions for Summary Judgment, and the Oppositions thereto, and for reasons contained herein, Plaintiffs' Motion for Summary Judgment is GRANTED. Consolidated Plaintiff's Motion for Summary Judgement is DENIED. Also, Plaintiffs Motion to Strike the Affidavit of Keith Jones [12-1] is GRANTED.

FACTS

The facts pertinent to the resolution of the pending motion are as follows. On February 16, 1997, Tidewater entered into a Blanket Time Charter Agreement with Coastline Geophysical. According to the Time Charter, Tidewater was to provide to Coastline four vessels suited for offshore activities in the mineral and oil industry. Subsequent to the first charter, N.C.S. installed various seismic equipment and computer equipment aboard the four vessels that Coastline had chartered from Tidewater. Following the installation of the equipment, the four vessels embarked on a seismic

expedition in the Gulf of Mexico in search of oil and natural gas. The equipment that N.C.S. provided to Coastline basically allowed the four vessels to coordinate information amongst themselves in order to better facilitate their search for oil and gas. The first two vessels laid cable upon the ocean floor. A third vessel, the source vessel, sent information along the cable via airgun shots from caterpillar machinery located on the vessel. The fourth vessel recorded data generated from these airgun shots.

On August 14, 1997, Coastline chartered four different vessels from Tidewater. These vessels, the M/V SECRETARIAT, MN COUNT FLEET, MN COUNT TURF, AND M/V MILTON TIDE were chartered out for seismic exploration in Africa. The motions for summary judgements filed by both sides pertain to these four vessels.

Following the second charter, the N.C.S. equipment used on the first expedition in the Gulf of Mexico was placed on the M/V SECRETARIAT, M/V COUNT FLEET, MV COUNT TURF, AND M/V MILTON TIDE at Quality Shipyards, a subsidiary owned by Tidewater. Also Racal Survey supplied equipment that would receive positioning correction data. This data would then be transferred by the Racal Survey equipment to the N.C.S. computer system aboard each recorder vessel. The African expedition, like the Gulf expedition, involved coordination of information among the four vessels in their search for oil and gas. Relying on information generated from N.C.S. equipment, two of the vessels laid cable. A third vessel, the source vessel, sent information along the cable via airgun shots from caterpillar machinery . The fourth vessel recorded data generated from these airgun shots. The data collected from these seismic operations would then be analyzed. This analysis was supposed to help better predict the presence of oil and natural gas.

Coastline, now defunct, was not able to meet the obligations it owed to N.C.S. and Racal for the use of said equipment; therefore, together, they have filed a motion for partial summary judgement claiming a valid maritime lien on said vessels.

SUMMARY JUDGMENT

A. Applicable Law

Under Rule 56 of the Federal Rules of Civil Procedure, summary judgment shall be granted where:

> the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

No genuine issue of material fact exists "where the record as a whole could not lead a rational trier of fact to find for the nonmoving party." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-24, 106 S.Ct. 2548, 2552-53, 91 L.Ed.2d 265 (1986). The burden of proof as to the lack of genuine issue of fact is on the moving party, and a court should not grant summary judgment unless convinced that there is no evidence to sustain a recovery under any circumstances.

In determining the existence of such genuine issues of material fact, this Court must view the record in a light most favorable to the nonmoving party and must give that party the benefit of all reasonable inferences to be drawn from the facts. *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 106 S.Ct. 1348, 1356-57, 89 L.Ed.2d 538 (1986). Thus, summary judgment is inappropriate where there is a genuine disagreement as to the reasonable inferences to be drawn from undisputed facts, *Xerox Corp. v. Genmoora Corp.* 888 F.2d 345, 352 (5th Cir. 1989), or when the summary judgment evidence is subject to conflicting

interpretations. *Field v. City of South Houston, Tex.* 922 F.2d. 1183, 1191 (5th Cir. 1991).

Although, as noted previously, the burden of proof as to the lack of a genuine issue of material fact is on the moving party, the moving party may shift this burden by showing an absence of evidence to support the nonmoving party's case. *Celotex Corp. v. Catrett*, 477 U.S. at 325, 106 S.Ct. At 2553-54; *Lavespere v. Niagara Machine & Tool Works, Inc.* 910 F.2d 167, 178 (5th Cir. 1990). The burden then shifts to the nonmoving party who must come forward with evidence to support his claim. *Id.* To establish the sufficiency of the evidence, the nonmover must "go beyond the pleadings" and designate facts to support each element of the cause of action, showing that there is a genuine issue of material fact. *Id.* The Court must not weigh evidence on summary judgment. *Anderson v. Liberty Lobby. Inc.*, 477 U.S. 242, 249, 106 S.Ct. 2505, 2510-11, 91 L.Ed.2d 202 (1986); *Amburgey v. Corhart Refractories Corp. Inc.*, 936 F.2d. 805, 809 (5th Cir. 1991). The movant is entitled to all reasonable and justifiable inferences from the evidence submitted. *Anderson v. Liberty Lobby. Inc.*, 477 U.S. at 255, 106 S.Ct. At 2513-14.

B. Parties' Contentions

Pursuant to Federal Rule of Civil Procedure 56, Plaintiff's have filed the instant Partial Motion for Partial Summary Judgment. In support of the Partial Motion for Summary Judgment, Racal/NCS contend that they possess a valid maritime lien pursuant to the Maritime Lien Act (the Act). RacalINCS claim that the equipment that they provided were necessaries as defined by the Act and that Coastline, as a charterer, had the legal authority to bind the aforementioned vessels to a maritime lien. Racal/NCS further contend that because they provided necessaries to the vessel on the order of a person authorized by the owner, it has a right to enforce

the lien without having to prove that credit was given to the vessel rather than to Coastline.

Tidewater claims they are entitled to summary judgement because Racal/NCS do not possess a lien on Tidewater vessels. Tidewater contends that four requirements must be met for there to be a valid maritime lien under the Act:

1. The goods or services must be necessaries to the vessel;
2. The goods or services must be provided to a vessel,
3. The goods or services must be provided on the order of the owner; and
4. The goods or services must be provided on the credit of the vessel rather than on the personal credit of the owner or charterer.

46 U.S.C. § 31342; *Eguilease corp. v. M/V Sampson*, 793 F.2d 593 (5th Or. 1986).

Tidewater claims that the goods and services were provided on the credit of coastline. In support of this contention, Tidewater points to the deposition testimony of Philip Garrod who was Racal/N.C.S.'s Vice President of Operations. Excerpts from the relevant part of the deposition are as follows:

Q. Did you expect to be paid by coastline?

A. Yes.

Q. Did you expect to be paid by Tidewater?

A. No.

(Exh. E, depo. of Garrod, p. 145).

Tidewater also asserts that the affidavit submitted by Keith Jones, coastline's former President, confirms the assertion

that Racal did not rely on the credit of the vessels. (Exh. F affid. of Jones). The affidavit reads in part as follows:

> NCS International relied solely on the credit of Coastline Geophysical, Inc.
>
> * * *
>
> NCS International Inc. Did not rely upon the credit of any vessels which would be chartered by Coastline.

Racal/NCS has filed a Motion to Strike the affidavit of Jones claiming that the affidavit is not based on personal knowledge, constitutes hearsay, and is solely made up of conclusory allegations. Tidewater urges that Jones' presence at negotiation meetings between Racal/NCS and coastline demonstrates that he has personal knowledge as to the intentions of Racal/NCS regarding the issue of reliance.

Also, Tidewater asserts that the goods and services were not vessel necessaries and were not provided to the vessels within the meaning of the Act. Tidewater contends that the goods and services were provided to coastline and not to the vessels themselves. Tidewater claims that no statutory lien exists when the goods or services are provided to the owner or charterer for use at its discretion instead of to a specific vessel. *Silver Star Enterprises, Inc. v. M/V Saramacca*, 82 F. 3d 666 (5th Cir. 1996). Tidewater claims that since Coastline retained authority to place the equipment on the vessels of their choice, no valid maritime lien exists. (Exh. P, Racal/NCS February 1996 Proposal and contract; Exh. E, depo. of Garrod, p. 35-36).

ANALYSIS

46 U.S.C. § 31342 (a) (Supp.1998) states that a person providing necessaries to a vessel on the order of the owner or a person authorized by the owner-

(1) has a maritime lien on the vessel;

(2) may bring a civil action in rem to enforce the lien; and

(3) is not required to allege or prove that credit was given to the vessel.

There are three issues that need to be resolved in the current matter. The first issue is whether or not coastline was a charterer under the meaning of the Act and whether or not they had the authority to procure necessaries for the vessels. The second issue is whether the equipment and services were necessaries under the meaning of the Act. The third issue is whether these necessaries were provided directly to coastline rather than to said vessels.

In order to resolve the first issue of whether coastline had the authority to procure necessaries for the vessels, the nature of the relationship between coastline and Tidewater must be determined. As stated earlier, coastline and Tidewater entered into two Time charter contractual agreements. The terms of both contacts named coastline as a charterer of vessels owned by Tidewater. Under the Maritime Lien Act, a charterer of a vessel is one who becomes entitled to use of whole of whole of vessel belonging to another (owner) as a result of charter agreement. 46 U.S.C. § 31341. In *Trico Marine Operations. Inc. v. Falcon Drilling Co.*, 116 F. 3d 159, 161 (5th Cir. 1997), the court characterized an agreement in which the owner provided a vessel, crew, and equipment to another party as a charter under the meaning of the Act. According to the terms of the Time Charters between Tidewater and Coastline, Tidewater would provide the vessel, crew and equipment to Coastline; therefore, the contract for the use of the Tidewater vessels by Coastline demonstrates that Coastline was a charterer under the meaning of the Act. A charterer is presumed to have the authority to procure necessaries for a vessel. 46 U.S.C. § 31341. To overcome this presumption a provider of necessaries must intentionally forego his lien. The evidence presented in this case does not indicate that Racal/NCS intended to forego their right to a

maritime lien. Tidewater cited deposition testimony of Phillip Garrod stating:

> Q. Did you expect to be paid by Coastline?
> A. Yes.
> Q. Did you expect to be paid by Tidewater?
> A. No.

(Exh. E, depo. of Garrod, p. 145).

In *Gulf Oil Trading Company v. M/V CARIBE MAR*, 757 F. 2d 743 (5th Cir. 1985), the court stated that the creditor must intentionally forego the maritime lien and look solely to the credit of the vessel. Garrod's testimony does not indicate that Racal/NCS waived their right to a maritime lien, but merely stated that they expected to be paid by Coastline and not by Tidewater. A provider of necessaries may in fact look to both ship and ship owner for payment. "Accepting promises by the owner to pay the debt . . . would not be indicative of an intention to waive the lien. 2 Benedict 3-23.

Tidewater also claims that the affidavit of Keith Jones indicates that Racal/NCS intended to forego their right to a maritime lien. Jones affidavit states:

> NCS International relied solely on the credit of Coastline Geophysical, Inc.
>
> * * *
>
> NCS International Inc. Did not rely upon the credit of any vessels which would be chartered by Coastline.

As stated earlier, Racal/NCS filed a motion to strike Jones' affidavit. The court finds that Jones' affidavit does not indicate, within the affidavit itself, that the assertions of Jones were based on personal knowledge as required by Fed. R.Civ.P.Rule 56(e). Mr. Jones affidavit is speculative in this sense because no basis was given as to how he personally knew. that Racal/NCS was relying solely on the credit of Coastline. Nevertheless, nothing in Jones affidavit exhibits

the existence of an express agreement that Racal/NCS relied solely on the credit of Coastline as required by the Act. *Benedict on Admiralty* S 38, at 3-53 (7th Ed.1992). Tidewater also contends, relevant to this issue, that because the Time Charter Agreement contained a no-lien provision that Racal/NCS do not possess a maritime lien. The current law is that a supplier of necessaries may still attain a maritime lien, even if a no-lien provision between the owner and charterer exists. *Benedict on Admiralty* S 38, at 3-40 (7th Ed.1992). If a supplier is aware that the vessel is under a charter agreement, "he will not be charged with knowledge of a no-lien provision absent affirmative evidence that he had received express notice from the owner or other reliable source that the vessel was not to be bound." *Benedict on Admiralty* S 38, at 3-40 (7th Ed. 1992). This court finds that the evidence presented by Tidewater regarding the noticing of Racal/NCS as to the no-lien provision in the charter. For these reasons, the court finds that Coastline was a charterer under the meaning of the Act and that they had the authority to procure necessaries for the vessels.

The second issue in this matter is whether the equipment and services provided by Racal/NCS were necessaries under the meaning of the Act. According to the Act, "repairs, supplies, towage are deemed necessaries under the Act.. 46 U.S.C. S 31301(4). In *Equilease v. M/V SAMPSON*, 793 F.2d 598, 603 (5th Cir.1986)(en banc), the Fifth Circuit classified necessaries as "most goods or services that are useful to the vessel, keep her out of danger and enable her to perform her particular function." The court finds that the seismic equipment Racal/NCS provided were necessaries under the meaning of the Act. The facts clearly demonstrate that the equipment provided by Racal/NCS was useful to the vessels. The equipment basically was installed to help better predict the presence of oil and natural gas. These vessels were chartered to Coastline for the purpose of exploration of oil

and natural gas; hence, the equipment was useful and therefore "necessary" to the vessel.

The third and final issue is whether these necessaries were provided directly to Coastline rather than to said vessels. As stated, Tidewater contends that because Coastline retained authority with regard to the placement of equipment on the vessels, no maritime lien existed. In support of this contention, Tidewater relies on the holding in *Silver Star Enterprises, Inc. v. M/V Saramacca*, 82 F. 3d 666 (5th Cir. 1996). In *Silver Star*, the Fifth Circuit held that no statutory lien existed when goods or services are provided to the owner or charterer for use at its discretion instead of to a specific vessel. *Silver Star Enterprises. Inc. v. M/V Saramacca*, 82 F. 3d 666 (5th Cir. 1996). Tidewater claims that since Coastline retained authority to place the equipment on the vessels of their choosing, no valid maritime lien exists. (Exh. P, Racal/NCS February 1996 Proposal and contract; Exh. E, depo. of Garrod, p. 35-36).The court in *Silver Star* felt bound by the seminal Supreme Court case, *Piedmont & Georges' Creek Coal Co. v. Seaboard Fisheries Co.*, 254 U.S. 1, 41 S.Ct. 1, 65 L.Ed. 97 (1920). This court notes the decisions in *Silver Star* and *Piedmont*, but distinguishes those cases from the case at bar. *Piedmont* and *Silver Star* involved situations where the owner of the vessels had purchased or leased products in bulk from a supplier. Also, in neither case did the supplier deliver the goods directly to the vessel. In the case at bar, the seismic equipment provided may not have been earmarked at the time Racal/NCS and Coastline contracted, but this is not fatal to the establishment of a maritime lien. This court relies on the 1940 Supreme Court case that distinguished Piedmont and sustained a claim for maritime liens, even though the oil was not earmarked for a specific vessel, on the ground that "oil was supplied exclusively for the vessels in question [and] was deliverd directly to the vessels and was so invoiced." *Dampskibsselskabet Dannebrog v. Signal Oil & Gas Co.*, 310 U.S. 268, 277, 60

S.Ct. 937, 942, 84 L.Ed. 1197 (1940). The court finds that the facts demonstrate that Racal/NCS delivered the seismic equipment directly to the vessel and subsequently installed the equipment directly to the vessel and subsequently installed the equipment at Quality Shipyards, a subsidiary owned by Tidewater. The fact that the equipment was installed at Quality Shipyards ws an important factor for this court in reaching this decision. Tidewater had ample opportunity to notice Racal/Coastline as to the existence of the no-lien provision in the charter, if this glaring omission had not occurred, Racal/NCS could not have claimed a maritime lien. For these reasons, the court finds that the equipment was provided to the vessels and not directly to Coastline as Tidewater contended.

CONCLUSION

Based on the foregoing analysis, the Plaintiffs' Motion for Partial Summary Judgment [87-1] regarding Plaintiff's claims to a valid maritime lien is GRANTED. Consolidated Plaintiff's Motion for Summary Judgment [107-1] is DENIED. Also Plaintiff's Motion to Strike the affidavit of Keith Jones [121-1] is GRANTED.

THUS DONE AND SIGNED at Lafayette, Louisiana this 23rd day of October, 1997.

/s/ Richard T. Haik
RICHARD T. HAIK
UNITED STATES DISTRICT JUDGE

APPENDIX C

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE-OPELOUSAS DIVISION

CIVIL ACTION
CONSOLIDATED NO. 97-1628
JUDGE HAIK
MAGISTRATE JUDGE METHVIN
RACAL SURVEY U.S.A., INC., *et al*
versus
M/V COUNT FLEET, *et al*

CIVIL ACTION
CONSOLIDATED NO. 97-1692
JUDGE HAIK
MAGISTRATE JUDGE METHVIN
TIDEWATER MARINE INTERNATIONAL, INC.
versus
TWO HIGH PRESSURE AIR COMPRESSORS, ETC., *et al.*

CIVIL ACTION
CONSOLIDATED NO. 97-1668
JUDGE HAIK
MAGISTRATE JUDGE METHVIN
TIDEWATER MARINE INTERNATIONAL, INC.
versus
THAT CERTAIN SEISMIC EQUIPMENT, ETC.

AMENDED RULING TO CORRECT TYPOGRAPHICAL ERROR

Pending before the Court is Plaintiffs Racal Survey U.S.A. and N.C.S. Intl. Inc., hereafter referred to as Racal/NCS. Motion for Partial Summary Judgment pursuant to Federal Rule of Civil Procedure 56. The Motion was properly filed with the Clerk of Court for the Western District of Louisiana on March 5, 1998. Consolidated Plaintiff, Tidewater Marine Intl., hereafter referred to as Tidewater, filed their own Motion and Memorandum for Summary Judgement [107-1, 108-1] that also contained an Opposition to Racal/NCS' Motion for Partial Summary Judgment on July 9, 1998. Plaintiff, Racal/NCS filed a Memorandum in Opposition to Tidewater's Motion for Summary Judgement [122-1] on July 23, 1998. Also on July *23*, 1998, Plaintiff filed a Motion to Strike the Affidavit of Keith Jones [121-1]. On August 6, 1998, Tidewater filed a memorandum in opposition to Plaintiffs Motion to Strike [137-1]

After a thorough review of both Motions for Summary Judgment, and the Oppositions thereto, and for reasons contained herein, Plaintiffs' Motion for Summary Judgment [87-1] is GRANTED. Consolidated Plaintiffs Motion for Summary Judgement [107] is DENIED. Also, Plaintiffs Motion to Strike the Affidavit of Keith Jones [121-1] is GRANTED.

FACTS

The facts pertinent to the resolution of the pending motion are as follows. On February 16, 1997, Tidewater entered into a Blanket Time Charter Agreement with Coastline Geophysical. According to the Time Charter, Tidewater was to provide to Coastline four vessels suited for offshore activities in the mineral and oil industry. Subsequent to the first charter, N.C.S. installed various seismic equipment and computer equipment aboard the four vessels that Coastline had chartered from Tidewater. Following the installation of

the equipment, the four vessels embarked on a seismic expedition in the Gulf of Mexico in search of oil and natural gas. The equipment that N.C.S. provided to Coastline basically allowed the four vessels to coordinate information amongst themselves in order to better facilitate their search for oil and gas. The first two vessels laid cable upon the ocean floor. A third vessel, the source vessel, sent information along the cable via airgun shots from caterpillar machinery located on the vessel. The fourth vessel recorded data generated from these airgun shots.

On August 14, 1997, Coastline chartered four different vessels from Tidewater. These vessels, the M/V SECRETARIAT, M/V COUNT FLEET, M/V COUNT TURF, AND M/V MILTON TIDE were chartered out for seismic exploration in Africa. The motions for summary judgements filed by both sides pertain to these four vessels.

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Coastline, now defunct, was not able to meet the obligations it owed to N.C.S. and Racal for the use of said equipment; therefore, together. they have filed a motion for partial summary judgement claiming a valid maritime lien on said vessels.

SUMMARY JUDGMENT

A. Applicable Law

Under Rule 56 of the Federal Rules of Civil Procedure. Summary judgment shall be granted where:

> the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

No genuine issue of material fact exists "where the record as a whole could not lead a rational trier of fact to find for the nonmoving party." *Celotex Cop. v. Catrett*, 477 U.S. 317, 322-24, 106 S.Ct. 2548. 2552-53. 91 L.Ed.2d 265 (1986). The burden of proof as to the lack of genuine issue of fact is on the moving party, and a court should not grant summary judgment unless convinced that there is no evidence to sustain a recovery under any circumstances.

In determining the existence of such genuine issues of material fact, this Court must view the record in a light most favorable to the nonmoving party and must give that party the benefit of all reasonable inferences to be drawn from the facts. *Matsushita Electric Industrial Co. v. Zenith Radio Corps*, 475 U.S. 574, 106 S.Ct. 1348, 1356-57, 89 L.Ed.2d 538 (1986). Thus, summary judgment is inappropriate where there is a genuine disagreement as to the reasonable inferences to be drawn from undisputed facts, *Xerox Corp. v. Genmoora Cop.*, 888 F.2d 345, 352 (5th Cir. 1989), or when the summary judgment evidence is subject to conflicting

interpretations. *Field v. City of South Houston. Tex.*, 922 F.2d. 1183, 1191 (5th Cir. 1991).

Although. as noted previously, the burden of proof as to the lack of a genuine issue of material fact is on the moving party, the moving party may shift this burden by showing an absence of evidence to support the nonmoving party's case. *Celotex Corp. v. Catrett*, 477 U.S. at 325, 106 S.Ct. At 2553-54; *Lavespere v. Niagara Machine & Tool Works. Inc.*, 910 F.2d 167, 178 (5th Cir. 1 990). The burden then shifts to the nonmoving party who must come forward with evidence to support his claim. *Id.* To establish the sufficiency of the evidence, the nonmover must "go beyond the pleadings" and designate facts to support each element of the cause of action, showing that there is a genuine issue of material fact. Id. The Court must not weigh evidence on summary judgment. *Anderson v. Liberty Lobby. Inc.*, 477 U.S. 242, 249, 106 S.Ct. 2505, 2510-1 1, 91 L.Ed.2d 202 (1986); *Amburgey v. Corhart Refractories Corp. Inc.*, 936 F.2d. 805. 809 (5th Cir. 1991). The movant is entitled to all reasonable and justifiable inferences from the evidence submitted. *Anderson v. Liberty Lobby. Inc.*, 477 U.S. at 255, 106 S.Ct. At 25 13-14.

B. Parties' Contentions

Pursuant to Federal Rule of Civil Procedure 56, Plaintiffs have filed the instant Partial Motion for Partial Summary Judgment. In support of the Partial Motion for Summary Judgment, Racal/NCS contend that they possess a valid maritime lien pursuant to the Maritime Lien Act (the Act). Racal/NCS claim that the equipment that they provided were necessaries as defined by the Act and that Coastline, as a charterer, had the legal authority to bind the aforementioned vessels to a maritime lien. Racal/NCS further contend that because they provided necessaries to 'the vessel on the order of a person authorized by the owner, it has a right to enforce the lien without having to prove that credit was given to the vessel rather than to Coastline.

Tidewater claims they are entitled to summary judgement because Racal/NCS do not possess a lien on Tidewater vessels. Tidewater contends that four requirements must be met for there to be a valid maritime lien under the Act:

1. The goods or services must be necessaries to the vessel;
2. The goods or services must be provided to a vessel,
3. The goods or services must be provided on the order of the owner; and
4. The goods or services must be provided on the credit of the vessel rather than on the personal credit of the owner or charterer.

46 U.S.C. §31342; *Eguilease Corp. v. M/V Sampson*, 793 F.2d 598 (5th Cir. 1986).

Tidewater claims that the goods and services were provided on the credit of Coastline. In support of this contention. Tidewater points to the deposition testimony of Philip Garrod who was Racal/N.C.S.'s Vice President of Operations. Excerpts from the relevant part of the deposition are as follows:

Q. Did you expect to be paid by Coastline?

A. Yes.

Q. Did you expect to be paid by Tidewater?

A. No.

(Exh. E, depo. of Garrod, p. 145).

Tidewater also asserts that the affidavit submitted by Keith Jones, Coastline's former President, confirms the assertion that Racal did not rely on the credit of the vessels. (Exh. F affid. Of Jones). The affidavit reads in part as follows:

> NCS international relied solely on the credit of Coastline Geophysical, Inc.

* * *

NCS International Inc. Did not rely upon the credit of any vessels which would be chartered by Coastline.

Racal/NCS has filed a Motion to Strike the affidavit of Jones claiming that the affidavit is not based on personal knowledge, constitutes hearsay. and is solely made up of conclusory allegations. Tidewater urges that Jones' presence at negotiation meetings between Racal/NCS and Coastline demonstrates that he has personal knowledge as to the intentions of Racal/NCS regarding the issue of reliance.

Also, Tidewater asserts that the goods and services were not vessel necessaries and were not provided to the vessels within the meaning of the Act. Tidewater contends that the goods and services were provided to Coastline and not to the vessels themselves. Tidewater claims that no statutory lien exists when the goods or services are provided to the owner or charterer for use at its discretion instead of to a specific vessel. *Silver Star Enterprises. Inc. v. MN Saramacca*, 82 F.3d 666 (5th Cir. 1996). Tidewater claims that since Coastline retained authority to place the equipment on the vessels of their choice, no valid maritime lien exists. (Exh. P, Racal/NCS February 1996 Proposal and contract; Exh. E, depo. of Garrod, p. 35-36).

LAW AND ANALYSIS

46 U.S.C. § 31342 (a) (Supp. 1998) states that a person providing necessaries to a vessel on the order of the owner or a person authorized by the owner-

(1) has a maritime lien on the vessel;
(2) may bring a civil action in rem to enforce the lien; and
(3) is not required to allege or prove that credit was given to the vessel.

There are three issues that need to be resolved in the current matter. The first issue is whether or not Coastline was a charterer under the meaning of the Act and whether or not

they had the authority to procure necessaries for the vessels. The second issue is whether the equipment and services were necessaries under the meaning of the Act. The third issue is whether these necessaries were provided directly to Coastline rather than to said vessels.

In order to resolve the first issue of whether Coastline had the authority to procure necessaries for the vessels, the nature of the relationship between Coastline and Tidewater must be determined. As stated earlier, Coastline and Tidewater entered into two Time Charter contractual agreements. The terms of both contacts named Coastline as a charterer of vessels owned by Tidewater. Under the Maritime Lien Act, a charterer of a vessel is one who becomes entitled to use of whole of whole of vessel belonging to another (owner) as a result of charter agreement. 46 U.S.C. § 31341. In *Trico Marine Operations. Inc. v. Falcon Drilling Co.*, 116 F.3d 159, 161 (5th Cir. 1997), the court characterized an agreement in which the owner provided a vessel, crew, and equipment to another party as a charter under the meaning of the Act. According to the terms of the Time Charters between Tidewater and Coastline, Tidewater would provide the vessel, crew and equipment to Coastline; therefore, the contract for the use of the Tidewater vessels by Coastline demonstrates that Coastline was a charterer under the meaning of the Act. A charterer is presumed to have the authority to procure necessaries for a vessel. 46 U.S.C. § 31341. To overcome this presumption a provider of necessaries must intentionally forego his lien. The evidence presented in this case does not indicate that Racal/NCS intended to forego their right to a maritime lien. Tidewater cited deposition testimony of Phillip Garrod stating:

Q. Did you expect to be paid by Coastline?
A. Yes.
Q. Did you expect to be paid by Tidewater?
A. No.

(Exh. E, depo. of Garrod, p. 145).

In *Gulf Oil Trading Company v. M/V CARIBE MAR*, 757 F.2d 743 (5th Cir. 1985), the court stated that the creditor must intentionally forego the maritime lien and look solely to the credit of the vessel. Garrod's testimony does not indicate that Racal/NCS waived their right to a maritime lien, but merely stated that they expected to be paid by Coastline and not by Tidewater. A provider of necessaries may in fact look to both ship and ship owner for payment. "Accepting promises by the owner to pay the debt . . . would not be indicative of an intention to waive the lien. 2 Benedict 3-23.

Tidewater also claims that the affidavit of Keith Jones indicates that Racal/NCS intended to forego their right to a maritime lien. Jones affidavit states:

> NCS international relied solely on the credit of Coastline Geophysical, lnc.
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>
> NCS International Inc. Did not rely upon the credit of any vessels which would be chartered by Coastline.

As stated earlier, Racal/NCS filed a motion to strike Jones' affidavit. The court finds that Jones' affidavit does not indicate, within the affidavit itself, that the assertions of Jones were based on personal knowledge as required by Fed. R.Civ.P.Rule 56(e). Mr. Jones affidavit is speculative in this sense because no basis was given as to how he personally knew that Racal/NCS was relying solely on the credit of Coastline. Nevertheless. nothing in Jones affidavit exhibits the existence of an express agreement that Racal/NCS relied solely on the credit of Coastline as required by the Act. *Benedict on Admiralty* S 38. at 3-53 (7th Ed.1992). Tidewater also contends, relevant to this issue, that because the Time Charter Agreement contained a no-lien provision that Racal/NCS do not possess a maritime lien. The current law is that a supplier of necessaries may still attain a maritime lien, even if a no-lien provision between the owner and charterer

exists. *Benedict on Admiralty* S 38, at 3-40 (7th Ed.1992). If a supplier is aware that the vessel is under a charter agreement, "he will not be charged with knowledge of a no-lien provision absent affirmative evidence that he had received express notice from the owner or other reliable source that the vessel was not to be bound." *Benedict on Admiralty* S 38, at 3-40 (7th Ed.1992). This court finds that no evidence was presented by Tidewater regarding the noticing of Racal/NCS as to the no-lien provision in the charter. For these reasons, the court finds that Coastline was a charterer under the meaning of the Act and that they had the authority to procure necessaries for the vessels.

The second issue in this matter is whether the equipment and services provided by Racal/NCS were necessaries under the meaning of the Act. According to the Act, "repairs, supplies, towage are deemed necessaries under the Act. 46 U.S.C. S 31301(4). In *Equilease v. M/V SAMPSON*, 793 F.2d 598, 603 (5th Cir.1986)(en banc), the Fifth Circuit classified necessaries as "most goods or services that are useful to the vessel, keep her out of danger and enable her to perform her particular function. "The court finds that the seismic equipment Racal/NCS provided were necessaries under the meaning of the Act. The facts clearly demonstrate that the equipment provided by Racal/NCS was useful to the vessels. The equipment basically was installed to help better predict the presence of oil and natural gas. These vessels were chartered to Coastline for the purpose of exploration of oil and natural gas; hence, the equipment was useful and therefore "necessary" to the vessel.

The third and final issue is whether these necessaries were provided directly to Coastline rather than to said vessels. As stated, Tidewater contends that because Coastline retained authority with regard to the placement of equipment on the vessels, no maritime lien existed. In support of this contention, Tidewater relies on the holding in *Silver Star*

Enterprises, Inc. v. M/V Saramacca, 82 F.3d 666 (5th Cir. 1996). In *Silver Star*, the Fifth Circuit held that no statutory lien existed when goods or services are provided to the owner or charterer for use at its discretion instead of to a specific vessel. *Silver Star Enterprises, Inc. v. M/V Saramacca*, 82 F.3d 666 (5th Cir. 1996). Tidewater claims that since Coastline retained authority to place the equipment on the vessels of their choosing, no valid maritime lien exists. (Exh. P, Racal/NCS February 1996 Proposed and contract,; Exh. E, depo. of Garrod, p. 35-36). The court in *Silver Star* felt bound by the seminal Supreme Court case. *Piedmont & Georges' Creek Coal Co. v. Seaboard Fisheries Co.*, 254 U.S. 1, 41 S.Ct. 1, 75 L.Ed. 97 (1920). This court notes the decisions in *Silver Star* and *Piedmont*, but distinguishes those cases from the case at bar. *Piedmont* and *Silver Star* involved situations where the owner of the vessels had purchased or leased products in bulk from a supplier. Also, in neither case did the supplier deliver the goods directly to the vessel. In the case at bar, the seismic equipment provided may not have been earmarked at the time Racal/NCS and Coastline contracted, but this is not fatal to the establishment of a maritime lien. This court relies on the 1940 Supreme Court case that distinguished Piedmont and sustained a claim for maritime liens, even though the oil was not earmarked for a specific vessel, on the ground that "oil was supplied exclusively for the vessels in question [and] was delivered directly to the vessels and was so invoiced." *Dampskibsselskabet Dannebrog v. Signal Oil & Gas Co.*, 310 U.S. 268, 277, 60 S.Ct. 937, 942, 84 L.Ed. 1197 (1940). The court finds that the facts demonstrate that Racal/NCS delivered the seismic equipment directly to the vessel and subsequently installed the equipment at Quality Shipyards, a subsidiary owned by Tidewater. The fact that the equipment was installed at Quality Shipyards was an important factor for this court in reaching this decision. Tidewater had ample opportunity to notice Racal/Coastline as to the existence of the no-lien

provision in the charter, if this glaring omission had not occurred, Racal/NCS could not have claimed a maritime lien. For these reasons, the court finds that the equipment was provided to the vessels and not directly to Coastline as Tidewater contended.

CONCLUSION

Based on the foregoing analysis, the Plaintiffs' Motion for Partial Summary Judgment [87-1] regarding Plaintiff's claims t a valid maritime lien is GRANTED. Consolidated Plaintiff's Motion for Summary Judgment [107-1] is DENIED. Also Plaintiff's Motion to Strike the affidavit of Keit Jones [121-1] if GRANTED.

THUS DONE AND SIGNED at Lafayette, Louisiana this 20th day of November, 1998.

/s/ Richard T. Haik
RICHARD T. HAIK
UNITED STATES DISTRICT JUDGE

APPENDIX D

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE/OPELOUSAS DIVISION

CIVIL DOCKET NO. 97-1628
JUDGE HAIK
MAGISTRATE JUDGE TYNES

RACAL SURVEY U.S.A., INC., *et al*

VERSUS

M/V COUNT FLEET, *et al*

CIVIL DOCKET NO. 97-1692
JUDGE HAIK
MAGISTRATE JUDGE TYKES

TIDEWATER MARINE INTERNATIONAL, INC.

VERSUS

TWO HIGH PRESSURE AIR COMPRESSORS, ETC., *et al*

CIVIL DOCKET NO. 97-1668
JUDGE HAIK
MAGISTRATE JUDGE TYKES

TIDEWATER MARINE INTERNATIONAL, INC.

VERSUS

THAT CERTAIN SEISMIC EQUIPMENT ETC.

FINAL JUDGMENT

BE IT REMEMBERED that on August 13, 1998, came on to be heard (1) Input/Output, Inc.'s Application for Petitioner Tidewater to Show Cause Instanter or, Alternatively, Motion for Summary Judgment, (2) Tidewater Marine International, Inc.'s Motion for Summary Judgment (regarding Tidewater's claim against the equipment and compressors), (3) Input/Output, Inc.'s Response in Opposition to Tidewater's Motion for Summary Judgment and Reply to Tidewater's Opposition to Input/Output's Motion for Summary Judgment, and (4) Tidewater's Motion for Interlocutory Sale of Compressors and Equipment. After consideration of the motions, the evidence submitted and the arguments of counsel, the Court finds that the there are no genuine issues of material fact and that Input/Output, Inc. is entitled to a summary judgment and that Tidewater Marine International, Inc. ("Tidewater"), is not entitled to claim a maritime lien against the property seized.

It is therefore ORDERED that the seizure orders dated on or about August 28, 1997, September 3, 1997 and October 16, 1997, and any writs of attachment or warrants of arrest with respect to such orders are hereby dissolved and the property seized thereby is to be immediately released from the custody and control of the U.S. Marshal, Tidewater, and any other persons designated or appointed custodians pursuant to any prior orders of this Court, such property specifically including but not limited to, the Two High Pressure Air Compressors each driven by a Caterpillar 399 Diesel Engine bearing Serial Nos. 353 6652 and 35B 4016 and that certain Seismic Equipment identified in Exhibit C "Amended" attached hereto.

It is further ORDERED that Tidewater's Motion for Interlocutory Sale of Compressors and Equipment is denied.

It is further ORDERED that Input/Output inform Tidewater of the steps and process it employs in connection with any foreclosure sale of the subject equipment and compressors.

It is further ORDERED that Input/Output deposit and keep all proceeds of any sale, net of costs of sale, in separate /account/pending the exhaustion of any appeal by Tidewater of this order or any further orders of this Court or any other court of competent jurisdiction.

It is further ORDERED that Input/Output's claims against any parties in this action, including Coastline Geophysical, Inc., are dismissed without prejudice to refile same, so that Input/Output may proceed against all such parties in any other forum, under any applicable law, including the laws of Texas.

It is further ORDERED that costs not be taxed until the entire matter is concluded.

IT IS FURTHER ORDERED that although this case involves multiple parties and multiple claims, the claims that the Court determines that there are no just reasons for delay in directing the entry of this judgement denying Tidewater's maritime lien and that final judgement be entered within the meaning of Rule 54(b) of the federal rules of Civil Procedure.

THUS DONE AND SIGNED this 23rd day of October, 1998 at Lafayette, Louisiana.

/s/ Richard T. Haik
RICHARD T. HAIK
United States District Judge

APPENDIX E

[Filed Nov 20, 2000]

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-31382

RACAL SURVEY USA INC; NCS INTERNATIONAL INC
Plaintiffs-Counter Defendants Appellees

v.

M/V COUNT FLEET, HER ENGINES, TACKLE, FURNITURE & APPURTENANCES IN REM; *et al*
Defendants

TIDEWATER MARINE INTERNATIONAL INC
Counter Claimant Appellant

Case No. 98-31383

RACAL SURVEY USA INC; NCS INTERNATIONAL INC
Plaintiffs

v.

M/V COUNT FLEET, HER ENGINES, TACKLE, FURNITURE & APPURTENANCES IN REM; *et al*
Defendants

TIDEWATER MARINE INTERNATIONAL INC
Intervenor Defendant-Appellant-Cross Appellee

v.

INPUT/OUTPUT INC
Intervenor Plaintiff-Appellee-Cross Appellant

Appeals from the United States District Court
for the Western District of Louisiana, Lafayette

ON PETITION FOR REHEARING EN BANC

(Opinion 10/24/00, 5 Cir., _____, _____ F.3d _____)

Before EMILIO M. GARZA, DeMOSS, and STEWART, Circuit Judges.

PER CURIAM:

Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. No member of the panel nor judge in regular active service of the court having requested that the court be polled on Rehearing En Banc (FED.R.APP.P. and 5th CIR.R. 35), the Petition for Rehearing En Banc is DENIED.

Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. The court having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service not having voted in favor (FED.R.APP.P. and 5th CIR.R. 35), the Petition for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

/s/ Illegible
United States Circuit Judge

APPENDIX F

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE/OPELOUSAS DIVISION

Civil Action
No.
Section:
Magistrate:

RACAL SURVEY U.S.A., INC.
and NCS INTERNATIONAL, INC.

VERSUS

MV COUNT FLEET, M/V COUNT TURF, MV SECRETARIAT, M/V MILTON TIDE, MV TAYLOR TIDE, M/V WHITTIE TIDE, MV CAMERON SEAHORSE, and MV TOUPS TIDE, their engines, tackle, furniture and appurtenances, *in rem,* and COASTLINE GEOPHYSICAL INC., *in personam.*

VERIFIED COMPLAINT OF RACAL SURVEY U. S. A., INC. AND NCS INTERNATIONAL, INC WHOLLY OWNED SUBSIDIARIES OF THE RACAL CORPORATION

NOW INTO COURT, through undersigned counsel, come Racal Survey U.S.A., Inc. ("Racal") and NCS International, Inc. ("NCS"), wholly owned subsidiaries of the Racal Corporation, plaintiffs herein, who bring this action for possession of maritime property, for enforcement of maritime liens and for collection on a maritime contract, and respectfully aver as follows:

I.

Subject matter jurisdiction of this Honorable Court is founded upon its admiralty and maritime jurisdiction pursuant to the provisions of 28 U.S.C. § 1333 and in accordance with Rule 9(h) and the Supplemental Admiralty and Maritime Rules of the Federal Rules of Civil Procedure.

3.

Plaintiffs, Racal and NCS, are foreign corporations with their offices and principal places of business in Houston, Texas. These entities were the owners of certain equipment sold and leased to the vessels named herein and were also the employers of certain service personnel who performed services aboard each of the vessels named herein.

4.

Coastline Geophysical, Inc. ("Coastline"), on information and belief, is a foreign corporation with its principal place of business in Houston, Texas and at all material times was engaged in geophysical exploration work at various locations around the globe to include, but not limited to, the Gulf of Mexico, the waters off the Coast of West Africa near Cameroon, and the waters off the coast of Trinidad. At all material times Coastline had under charter certain vessels to carry out its geophysical seismic operations including, but not limited to, the vessels named herein.

A.

Defendant, M/V TAYLOR TIDE, is a merchant vessel of the United States of America, bearing Official Number 616435, which is found in the navigable waters of the United States within this district and jurisdiction of this Honorable Court or will be found within this district and jurisdiction of this Honorable Court during the pendency of this action.

B.

Defendant, M/V TIDE, is a merchant vessel of the United States of America, bearing Official Number 658122, which is found in the navigable waters of the United States within this district and jurisdiction of this Honorable Court or will be found within this district and jurisdiction of this Honorable Court during the pendency of this action.

C

Defendant, M/V CAMERON SEAHORSE, is a merchant vessel of the United Stares of America, bearing Official Number 632330, which is found in the navigable waters of the United States within this district and jurisdiction of this Honorable Court or will be found within this district and jurisdiction of this Honorable Court during the pendency of this action.

D.

Defendant, M/V TOUPS TIDE, is a merchant vessel of the United States of America, bearing Official Number 659578, which is found in the navigable waters of the United States within this district and jurisdiction of this Honorable Court or will be found within this district and jurisdiction of this Honorable Court during the pendency of this action.

E.

Defendant. M/V COUNT FLEET, is a merchant vessel of the United States of America. bearing Official Number 576643, which is found in the navigable waters of the United States within this district and jurisdiction of this Honorable Court or will be found within this district arid jurisdiction of this Honorable Court during the pendency of this action.

F.

Defendant. M/V COUNT TURF, is a merchant vessel of the United States of America, bearing Official Number

574106, which is found in the navigable waters of the United States within this district and jurisdiction of this Honorable Court or will be found within this district and jurisdiction of this Honorable Court during the pendency of this action.

G.

Defendant, M/V SECRETARIAT, is a merchant vessel of the United States of America, bearing Official Number 626141 , which is found in the navigable waters of the United States within this district and jurisdiction of this Honorable Court or will be found within this district and jurisdiction of this Honorable Court during the pendency of this action.

H.

Defendant, M/V SECRETARIAT, TIDE. is a merchant vessel of the United States of America, bearing Official Number 626282, which is found in the navigable waters of the United States within this district and jurisdiction of this Honorable Court or will be found within this district and jurisdiction of this Honorable Court during the pendency of this action

6.

Each of the foregoing vessels is found upon the navigable waters of the United States within this district and within the jurisdiction of this Honorable Court or will be found within this district and within the jurisdiction of this Honorable Court during the pendency of this action.

7.

On or about March 26, 1996 and until about August 14. 1996, CGI had M/V TAYLOR TIDE, M/V WHITTIE TIDE, M/V CAMERON SEAHORSE, and M/V TOUPS TIDE under charter for the purpose of conducting geophysical surveying operations.

8.

On or about March 26, 1996, pursuant to its contract with CGI, NCS provided and installed certain navigational equipment, computer hardware and software, satellite navigation equipment (hereinafter collectively referred to as "equipment") aboard the vessels referenced in the foregoing paragraph, for their use in conducting geophysical surveying operations.

9.

Of the equipment provided, some was sold to CGI and some was leased to CGI.

10.

CGI also contracted with NCS for NCS to provide data transmitted via satellite ("satellite data") to the aforementioned vessels for their use in conducting geophysical surveying operations, as well as personnel to operate the equipment, and NCS provided such satellite data and personnel to the vessels.

11.

The aforementioned vessels, with the aid of the personnel, equipment, and satellite data provided by NCS, worked in concert and conducted geophysical surveying operations until about August 14, 1996.

12.

On or about August 14, 1996 and until about August 1, 1997, CGI had M/V COUNT FLEET, M/V COUNT TURF, MV SECRETARIAT, and M/V MILTON TIDE under charter for the purpose of conducting geophysical surveying operations.

13.

Following August 14, 1996, the aforementioned vessels entered Quality Shipyard, in Houma, Louisiana, where

pursuant to another contract with CGI, NCS removed certain equipment from the aforementioned vessels and installed some of that equipment and other, additional equipment aboard M/V COUNT FLEET, M/V COUNT TURF. M/V SECRETARIAT, and M/V MILTON TIDE, also for their use in conducting geophysical surveying operations.

14.

On information and belief, at the present time all such equipment is believed to be located aboard M/V COUNT FLEET, M/V COUNT TURF, and M/V SECRETARIAT, as evidenced by the attached as Exhibit "A" (5 pages).

15.

Following installation of the equipment aboard M/V COUNT FLEET, M/V COUNT TURF, M/V SECRETARIAT, and M/V MILTON TIDE, the vessels, with the aid of the personnel, equipment, and satellite data provided by NCS and also with personnel provided by Racal pursuant to contract, worked in concert and conducted geophysical surveying operations until about August 1, 1997.

16.

Neither NCS nor Racal was ever informed or advised that CGI did not have authority to encumber any of the aforementioned vessels with maritime liens.

17.

CGI made partial payment for the equipment sold to it and provided for use of the aforementioned vessels, but a balance of approximately $300,000.00 remains outstanding.

18.

Racal and NCS have invoiced CGI for the personnel, equipment leased. and satellite data provided, of which amount $661,039.35 remains outstanding.

19.

Plaintiffs have made amicable demand upon CGI for payment of these outstanding balances but to no avail.

20.

NCS and Racal are entitled to immediate possession of the leased equipment which they own and which is still located aboard M/V COUNT FLEET, M/V COUNT TURF, and M/V SECRETARIAT, or aboard any other vessel where such equipment may be found, pursuant to Supplemental Admiralty Rule D of the Federal Rules of Civil Procedure.

21.

The personnel, equipment, and satellite data provided by plaintiffs constitute necessaries provided to the aforementioned vessels, within the meaning of 46 U.S.C. § 31341, *et seq.*

22.

The owners of the aforementioned vessels knowingly derived benefit from the necessaries provided by plaintiffs.

23.

At all material times, CGI intended to use M/V TAYLOR TIDE, M/V WHITTIE TIDE, M/V CAMERON SEAHORSE, and M/V TOUPS TIDE to work in concert as a single unit to perform geophysical surveying operations. each performing a particular and necessary task to completing the operation (*i.e.*, mother vessel, slave vessels. and source vessel).

24.

During the period of about March 26, 1996 and until about August 14, 1996, because M/V TAYLOR TIDE, M/V WHITTIE TIDE, M/V CAMERON SEAHORSE, and M/V TOUPS TIDE worked in concert and were electronically

connected, via radio signals, as a single unit to perform geophysical surveying operations, each performing a particular and necessary task to completing the operation (*i.e.*, mother vessel, slave vessels, and source vessel), plaintiffs claim a maritime lien upon all vessels, by virtue of the provisions of 46 U.S.C. § 31341, *et seq.*, to the extent of all outstanding charges for the personnel, equipment (sold and leased), and satellite data provided by plaintiffs jointly to these vessels. See, *Bollinger Quick Repair, Inc. v. M/V GOLIATH*, 965 F. Supp. 1448 (D. Or. 1997); *see also*, Exhibit "B" (9 pages). The outstanding balance due to plaintiffs for such necessaries is $170,238.72. *See*, Exhibit "C" (11 pages).

25.

At all material times, CGI intended to use M/V COUNT FLEET, M/V COUNT TURF, M/V SECRETARIAT, and M/V MILTON TIDE to work in concert as a single unit to perform geophysical surveying operations, each performing a particular and necessary task to completing the operation (*i.e.*, mother vessel, slave vessels, and source vessel).

26.

During the period of about August 14, 1996 and until about August 1, 1997, because M/V COUNT FLEET, M/V COUNT TURF, M/V SECRETARIAT, and M/V MILTON TIDE worked in concert and were electronically connected, via radio signals, as a single unit to perform geophysical surveying operations, each performing a particular and necessary task to completing the operation (*i.e.*, mother vessel, slave vessels, and source vessel), plaintiffs claim a maritime lien upon all vessels, by virtue of the provisions of 46 U.S.C. § 31341, *et seq.*, to the extent of all outstanding charges for the personnel, equipment (leased only), and satellite data provided by plaintiffs jointly to these vessels. *See, Bollinger Quick Repair, Inc. v. M/V GOLIATH*, 965

F. Supp. 1448 (D. Or. 1997); *see also*, Exhibit "D" (6 pages). The outstanding balance due to plaintiffs for such necessaries is $474436.38. *See*, Exhibit "E" (30 pages).

27.

Alternatively, by virtue of the provisions of 46 U.S.C. § 31341, *et seq.*, the personnel. equipment. and satellite data provided by plaintiffs to M/V TAYLOR TIDE, M/V WHITTIE TIDE, M/V CAMERON SEAHORSE, and M/V TOUPS TIDE and actually used aboard said vessels created maritime liens in favor of plaintiffs and against the said vessels The outstanding, minimum balance due to plaintiffs for such necessaries provided to each vessel is in that amount established by the entries on the invoices attached as Exhibit "C".

28.

Alternatively, by virtue of the provisions of 46 U.S.C. § 31341, *et seq.*, the personnel, equipment, and satellite data provided by plaintiffs to M/V COUNT FLEET, M/V COUNT TURF, MV SECRETARIAT, and M/V MILTON TIDE and actually used aboard said vessels created maritime liens in favor of plaintiffs and against the said vessels. The outstanding, minimum balance due to plaintiffs for such necessaries provided to each vessel is in that amount established by the entries on the invoices attached as Exhibit "E".

29.

Racal and NCS reserve the right to supplement or amend this Complaint if additional invoices, charges, or facts are determined.

WHEREFORE, plaintiffs pray that:

1. Process in due form of law issue against defendant, Coastline Geophysical, Inc compelling it to appear and answer this Complaint within the delays provided by Law.

2. After due proceedings had, there be judgment herein in favor of plaintiffs, Racal Survey U.S.A., Inc. arid NCS International, Inc., and against defendant, Coastline Geophysical. Inc., condemning said defendant to pay the amount due to plaintiffs. together with interest thereon, all costs of these proceedings, and all attorney fees.

3. Process in due form of law issue granting plaintiffs, Racal Survey U.S.A., Inc. and NCS International, Inc., immediate possession of the leased equipment which they own and which is still located aboard M/V COUNT FLEET, M/V COUNT TURF, M/V SECRETARIAT, and M/V MILTON TIDE or aboard any other vessel where such equipment may be found, and that any owner or charterer claiming an interest in the aforementioned vessels shall be compelled to detain any vessel under their control which has aboard any of the leased equipment owned by plaintiffs and permit to plaintiffs access to said vessel to permit removal of the leased equipment.

4. Process in due form of law issue against defendant, M/A TAYLOR TIDE in accordance with Rule C and Rule E of The Supplemental Rules for Certain Admiralty and Maritime Claims, of the Federal Rules of Civil Procedure, and that all persons claiming any interest therein be compelled to appear. and answer this Complaint;

5. After due proceedings had, there be judgment herein in favor of plaintiffs, Racal Survey U.S.A., Inc. and NCS International, Inc., and against defendant. M/V TAYLOR TIDE, condemning said vessel to be sold to pay the amount which the Court determines to be due to plaintiffs, together with interest thereon, costs of these proceedings, and all costs incurred in *custodia legis;*

6. Process in due form of law issue against defendant, M/V WHITTIE TIDE in accordance with Rule C and Rule E of The Supplemental Rules For Certain Admiralty and Maritime

Claims, of the Federal Rules of Civil Procedure, and that all persons claiming any interest therein be cited to appear and answer this Complaint;

7. After due proceedings had, there be judgment herein in favor of plaintiffs, Racal Survey U.S.A., Inc. and NCS International, Inc., and against defendant, M/V WHITTIE TIDE, condemning said vessel to be sold to pay the amount which the Court determines to be due to plaintiffs, together with interest thereon, costs of these proceedings, and all costs incurred in *custodia legis;*

8. Process in due form of law issue against defendant, M/V CAMERON SEAHORSE in accordance with Rule C and Rule E of The Supplemental Rules For Certain Admiralty and Maritime Claims, of the Federal Rules of Civil Procedure, and that all persons claiming any interest therein be cited to appear and answer this Complaint;

9. After due proceedings had, there be judgment herein in favor of plaintiffs, Racal Survey U.S.A., Inc. and NCS International, Inc., and against defendant, M/V CAMERON SEAHORSE condemning said vessel to be sold to pay the amount which the Court determines to be due to plaintiffs, together with interest thereon, costs of these proceedings, and all costs incurred in *custodia legis;*

10. Process lit due form of law issue against defendant, M/V TOUPS TIDE in accordance with Rule C and Rule E of The Supplemental Rules For Certain Admiralty and Maritime Claims, of the Federal Rules of Civil Procedure, and that all persons claiming any interest therein be cited to appear and answer this Complaint;

11. After due proceedings had, there be judgment herein in favor of plaintiffs, Racal Survey U.S.A., Inc. and NCS International, Inc., and against defendant, M/V TOUPS TIDE condemning said vessel to be sold to pay the amount which the Court determines to be due to plaintiffs, together with

interest thereon, costs of these proceedings, and all costs incurred in *custodia legis;*

12. Process in due form of law issue against defendant, M/V COUNT FLEET in accordance with Rule C and Rule E of The Supplemental Rules For Certain Admiralty and Maritime Claims, of the Federal Rules of Civil Procedure, and that all persons claiming any interest therein be cited to appear and answer this Complaint;

13. After due proceedings had, there be judgment herein in favor of plaintiffs, Racal Survey U.S.A., Inc. and NCS International, Inc., and against defendant, M/V COUNT FLEET condemning said vessel to be sold to pay the amount which the Court determines to be due to plaintiffs, together with interest thereon, costs of these proceedings, and all costs incurred in *custodia legis;*

14. Process in due form of law issue against defendant, M/V COUNT TURF in accordance with Rule C and Rule E of The Supplemental Rules For Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure, and that all persons claiming any interest therein be cited to appear and answer this Complaint

15. After due proceedings had, there be judgment herein in favor of plaintiffs, Racal Survey U.S.A., Inc. and NCS International, Inc., and against defendant, M/V COUNT TURF, condemning said vessel to be sold to pay the amount which the Court determines to be due to plaintiffs, together with interest thereon, costs of these proceedings, and all costs incurred in *custodia legis;*

16. Process in due form of law issue against defendant, M/V SECRETARIAT in accordance with Rule C arid Rule E of The Supplemental Rules For Certain Admiralty and Maritime Claims, of the Federal Rules of Civil Procedure, and that all persons claiming any interest therein be cited to appear and answer this Complaint;

17 After due proceedings had, there be judgment herein in favor of plaintiffs, Racal Survey U.S.A., Inc. and NCS International, Inc., and against defendant, M/V SECRETARIAT, condemning said vessel to be sold to pay the amount which the Court determines to be due to plaintiffs, together with interest thereon, costs of these proceedings, and all costs incurred in *custodia legis;*

18. Process in due form of law issue against defendant, M/V MILTON TIDE in accordance with Rule C and Rule E of The Supplemental Rules For Certain Admiralty and Maritime Claims, of the Federal Rules of Civil Procedure, and that all persons claiming any interest therein be cited to appear and answer this Complaint;

19. After due proceedings had, there be judgment herein in favor of plaintiffs, Racal Survey U.S.A., Inc. and NCS International, Inc., and against defendant, M/V MILTON TIDE, condemning said vessel to be sold to pay the amount which the Court determines to be due to plaintiffs, together with interest thereon, costs of these proceedings, and all costs incurred in *custodia legis;*

20. After due proceedings had, there be judgment herein granting to plaintiffs all general and equitable relief as this Court may deem just in the premises and be competent to grant.

Respectfully submitted,

LARZELERE & PICOU, L.L.P.

/s/ W J. Larzelere JR., T.A. (#8057)
W J. LARZELERE JR., T.A.
T. JUSTIN SIMPSON (#18437)
STEPHEN M. LARZELERE
(#23 183)
Suite 1100-Two Lakeway Center
3850 N. Causeway Boulevard
Metairie, LA 70002
Phone: (504) 834-6500

VERIFICATION

STATE OF LOUISIANA

PARISH OF JEFFERSON

BEFORE ME, the undersigned authority, personally came and appeared, PHILIP GARROD, who after first by me being duly sworn, did depose and say that he is Vice President, Resources, for plaintiff, Racal Survey, Inc.; that he was formerly was the Vice President, Operations, of NCS International, Inc.; that he was the representative of Racal Survey U.S.A., Inc. and NCS International, Inc. who participated in the transactions forming the basis of the Complaint; that he has personal knowledge of the facts stated in the above and foregoing Complaint; that he, Philip Garrod, is authorized to act as agent on behalf of Racal Survey U.S.A., Inc. and NCS International, Inc. for the purpose of the instant verification; and that he has read the foregoing Complaint and verifies that it is true and correct to the best of knowledge and information

/s/ Philip Garrod
PHILIP GARROD

SWORN TO AND SUBSCRIBED
BEFORE ME, THIS—DAY
OF AUGUST 1997.

/s/ Illegible
Notary Public

Please see next page for service instructions

SERVICE INSTRUCTIONS:

1. PLEASE ISSUE WARRANT FOR ARREST AND SEIZURE OF M/V COUNT FLEET, M/V COUNT TURF, M/V SECRETARIAT.

2. PLEASE WITHHOLD SERVICE ON COASTLINE GEOPHYSICAL, INC.

3. PLEASE WITHHOLD SERVICE UPON M/V TAYLOR TIDE, M/V WHITTIE TIDE, M/V CAMERON SEAHORSE, M/V TOUPS TIDE, and M/V MILTON TIDE.